



Department of the Environment

REPORT ON THE LONG-TERM FUNDING NEEDS OF STATE OIL POLLUTION PROGRAMS

Prepared by:

Land Management Administration

Prepared for:

Legislative Policy Committee

House Environmental Matters Committee

Senate Finance Committee

Senate Education, Health, and Environmental Affairs Committee

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I. EXECUTIVE SUMMARY

As required by Section 3, Chapter 377, Acts 2010, a work group was convened at the request of the Secretary of the Environment, which consisted of both industry representatives and Department representatives. The group met on several occasions to analyze the long-term funding needs to maintain the oil pollution programs in the State for the next several years. The work group is pleased to submit these findings and recommendations to the Legislative Policy Committee, the House Environmental Matter Committee, the Senate Finance Committee, and the Senate Education, Health, and Environmental Affairs Committee.

The work group recognized that there continues to be a strong need for the State's oil pollution programs and that those programs need adequate funding to continue to provide the protection and resources deserving of the citizens of Maryland and the State's environmental resources. Because of the overall decline of the import of oil into Maryland, the expanded uses of the Oil Fund in fiscal year 2011, and the scheduled oil fee decrease to \$0.03 per barrel beginning in fiscal year 2014, the work group found there will be an immediate shortfall of funds to the State's oil pollution programs if the Oil Fund revenue structure is not revised.

In an effort to balance use of the fees already paid into the Funds and to minimize the increase to the oil transfer fee, the work group makes the following recommendations to preserve the continued operation of the State's oil pollution programs:

- Raise the oil transfer fee from \$0.0575 to \$0.0800 per barrel beginning July 1, 2013 and continuing through June 30, 2016.
- Set the per barrel fee to \$0.03 per barrel beginning July 1, 2016.
- Move the Report on Status of the Maryland Oil Disaster Containment, Clean-Up, and Contingency Fund due date from October 1 to January 1.
- Beginning October 2, 2013, allow nonprofit organizations (under §501 (C)(3) of the Internal Revenue Code) to qualify for reimbursements from the Reimbursement Fund for cleanups related to heating oil tanks on their property.
- Extend the deadline for the Reimbursement Fund from June 30, 2013 to June 30, 2016.
- Transfer \$2.5 million from the Reimbursement Fund to the Oil Fund (uncodified).
- Convene another work group to study the long-term funding needs of the Oil Fund in three years and require another report to be submitted to the State Legislature by December 31, 2015 (uncodified).

II. INTRODUCTION

Section 3, Chapter 377, Acts of 2010 provides that:

“(a) The Secretary of the Environment shall convene a work group consisting of representatives of the various sectors of the petroleum marketing industry and representatives from appropriate public and private entities to review and assess the long-term funding needs of the oil pollution programs in the State.”

“(b) On or before December 31, 2012 in accordance with Section 2-1246 of the State Government Article, the Department of the Environment shall report the findings and recommendations of the work group to the Legislative Policy Committee, the House Environmental Matter Committee, and the Senate Finance Committee and Education, Health, and Environmental Affairs Committee.”

The Maryland Department of the Environment (MDE) convened a work group to study the funding needs of the oil pollution programs in the State. There are two State Special funds associated with Maryland’s oil pollution programs. They are the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund (“Oil Fund”) and the Oil Contaminated Site Environmental Cleanup Fund (“Reimbursement Fund”).

The Oil Fund is authorized under section 4-411 of the Environment Article, Annotated Code of Maryland. The Oil Fund is utilized by the MDE to operate the Oil Control Program, the Emergency Response Division, and certain oil-related functions within the Air and Radiation Management Administration and the Water Management Administration. The Reimbursement Fund is authorized under section 4-704 of the Environment Article, Annotated Code of Maryland. The Reimbursement Fund is currently used to reimburse residential property owners for the proper response and cleanup of their properties contaminated by heating oil from leaking tanks and accidental releases. The fund is also available to MDE for State spill response actions when necessary.

The Oil Fund revenues are generated by licensees paying 5.75 cents (\$0.0575) per barrel (42 U.S. gallons) of oil transferred into the State, including motor fuel ethanol and bio-fuels. Anyone transferring oil in the State must have a valid MDE Oil Transfer License and must pay the fee. There were 281 companies licensed with the MDE at the end of the 2012 fiscal year. Also credited to the Oil Fund are fines collected for oil pollution violations and recovered costs for certain clean-up expenses provided by the MDE. The Reimbursement Fund is no longer funded by the oil transfer fee and is operated by administering the remaining balance.

On July 1, 2013, the fee will reduce to 3 cents (\$0.03) per barrel per section 4-411 (c)(i)2 of the Environment Article, Annotated Code of Maryland. This reduction would severely cut the funding available to the State’s oil pollution programs. The work group has studied the long-term needs for these programs and is pleased to submit the findings and recommendations to the

Legislative Policy Committee, the House Environmental Matter Committee, the Senate Finance Committee, and the Senate Education, Health, and Environmental Affairs Committee.

III. FUNDING HISTORY AND USE

Oil Disaster Containment, Clean-Up and Contingency Fund

Section 4-411 of the Environment Article, Annotated Code of Maryland, authorizes the Oil Fund. The Oil Fund was established for MDE "to use to develop equipment, personnel, and plans; for contingency actions to respond to, contain, clean-up, and remove from the land and waters of the State discharges of oil, petroleum products, and their by-products into, upon, or adjacent to the waters of the State; and restore natural resources damaged by discharges" - Section 4-411(f). MDE is the responsible agency for all oil pollution activities within Maryland. The State has administered a comprehensive program for oil pollution control and oil spill response since 1972.

The Oil Fund is utilized by MDE to operate the Oil Control Program, the Emergency Response Division, and oil-related activities within the Air and Radiation Management Administration and the Water Management Administration. The Oil Fund is also used to respond to and cleanup releases, both above and below ground where the responsible party is unable or unwilling to perform the corrective action (i.e. orphaned sites). The Oil Fund further sustains other supporting functions within the Department such as attorney actions, enforcement, investigation, and administrative activities.

The Fund revenues are generated by licensees paying an oil transfer fee per barrel of oil transferred into the State. Anyone transferring oil, including motor fuel ethanol and bio-fuels, in the State must have a valid MDE Oil Transfer License and must pay the fee. Also, credited to the Fund are fines collected for oil pollution violations and recovered costs for certain expenses for clean-up performed by MDE.

Oil Contaminated Site Environmental Cleanup Fund

The Maryland General Assembly, recognizing the need for the cleanup of sites contaminated by oil from leaking underground storage tanks, enacted the Oil Contaminated Site Environmental Cleanup Fund ("Reimbursement Fund"), effective July 1, 1993 (Chapter 465, Acts 1993). The Reimbursement Fund was used until July 2000 to reimburse only owners or operators of underground storage tanks (USTs) storing commercial motor fuels, used oil, or fuel for operating emergency generators for site remediation and cleanup costs incurred on or after October 1, 1993.

During the 1996 legislature, the Reimbursement Fund was amended and enacted as Chapter 532, Acts 1996. The statute provided a limit of \$125,000 per occurrence subject to deductibles that range from \$7,500 to \$20,000.

At the end of Fiscal Year 1999, a funding shortfall of approximately \$3,000,000 existed for applicants to the Reimbursement Fund. House Bill 457 (Chapter 604, Acts of 2000) addressed the shortfall by providing additional resources for the Reimbursement Fund until July 1, 2005.

Effective July 1, 2000, a fee of \$0.01 per barrel was applied to oil at the first point of transfer in the State. MDE was authorized to use up to 8 percent of the revenue in the Reimbursement Fund during the fiscal year for the administration of the Reimbursement Fund.

Chapter 604, Acts 2000, also expanded the eligibility of the Reimbursement Fund to include owners of commercial underground storage tanks storing heating oil and to owners of residential heating oil tanks. Owners of residential heating oil tanks were eligible for reimbursement of up to \$10,000, less a \$1,000 deductible, for certain site rehabilitation costs incurred after October 1, 2000. A minimum of 25 percent of the \$0.01 per barrel fee collected per fiscal year was used for reimbursement of residential heating oil tank site rehabilitation costs.

Long-Term Funding Work Groups

Chapter 604, Acts 2000, required the Secretary of the Environment to convene a work group consisting of representatives from the various sectors of the petroleum marketing industry as well as representatives from appropriate public and private entities “to review and assess long-term funding needs of the oil pollution programs in the State.” The Department was required to report findings and recommendations of the work group to the Legislative Policy Committee, the House Environmental Matters Committee, and the Senate Economic and Environmental Affairs Committee no later than November 1, 2004 (Chapter 604, Acts of 2000).

As a result of the work group’s findings and recommendations report, SB 814 “Environment - Maryland Oil Disaster Containment, Clean-Up and Contingency Fund and Oil Contaminated Site Environmental Cleanup Fund” was proposed in the 2005 Maryland General Assembly. The bill was adopted (Chapter 177, Acts of 2005) into law and became effective July 1, 2005. This legislation altered the amount of the per barrel fee for oil transferred into the State and credited to the Oil Fund and the Reimbursement Fund. The per barrel fee credited to the Oil fund was \$0.04 per barrel and the fee credited to the Reimbursement Fund was \$0.0175 beginning July 1, 2005 until July 1, 2010.

The legislation also extended the termination date to December 31, 2007 for requests for reimbursement by owners or operators of commercial heating oil and other non-federally regulated USTs. It further stated that applications must be received by MDE no later than six months after site rehabilitation completion. The legislation extended reimbursement for owners of residential heating oil tanks until June 30, 2010, reduced the deductible to \$500, and raised the maximum amount to be reimbursed to \$20,000 per occurrence.

Prior to the extension ending on June 30, 2010, the Secretary of the Environment convened a second work group to again review and to assess long-term funding needs of the oil pollution programs in the State. As a result of the work group’s recommendations on the state of funding, SB 1117 “Environment - Maryland Oil Disaster Containment, Clean-Up and Contingency Fund and Oil Contaminated Site Environmental Cleanup Fund” was proposed in the 2010 Maryland General Assembly.

The bill was adopted (Chapter 377, Acts of 2010) into law and became effective July 1, 2010. The total per barrel fee of \$0.0575 remained the same and the amount credited to the Oil Fund

beginning July 1, 2010 until June 30, 2013 was increased from \$0.04 per barrel to \$0.0575 while the per barrel fee credited to the Reimbursement Fund changed from \$0.0175 to zero. The legislation also altered the per barrel fee deposited into the Oil Fund to be reduced to \$0.03 per barrel beginning July 1, 2013. In addition to the Oil Fund being used for discharges of oil, petroleum products and their by-products, Chapter 377 allowed the Oil Fund to also be used by MDE for oil-related activities in water pollution control programs.

Reimbursements were to continue using the balance of the Reimbursement Fund. Owners of a residential heating oil tank eligible under the Reimbursement Fund may apply no later than 6 months after rehabilitation completion until June 30, 2013 for cost incurred on or after October 1, 2000 up to a maximum amount of \$20,000, less a \$500 deductible.

Chapter 377, Acts of 2010 also required the Secretary of Environment to convene another work group to review and assess long-term funding needs of the oil pollution programs in the State and report the findings and recommendations no later than December 31, 2012.

IV. WORK GROUP ANALYSIS

As required by Section 3. Chapter 377. Acts 2010, a work group was convened at the request of the Secretary of the Environment. The work group members consisted of both industry representatives and Department representatives. The work group met on several occasions to analyze the long-term funding needs to maintain the oil pollution programs in the State for the next several years.

The work group looked at the current status of the Oil Fund and the Reimbursement Fund at the end of fiscal year 2012 (FY12). Based upon the FY12 actual costs, known reductions in funding from the U.S. Environmental Protection Agency for UST related programs, and other known and unanticipated factors (e.g. continued decrease in oil imports), the work group projected the needs for each administration within the MDE that utilizes the Oil Fund for FY14, FY15, and FY16 (Table 3). The work group found that based on the projections, an estimated \$0.09 per barrel fee would maintain the various programs that rely on the Oil Fund.

However, recognizing that there will be a projected \$1,000,000 balance in the Oil Fund at the end of FY13 and that there is an estimated \$2,500,000 in the Reimbursement Fund available to transfer to the Oil Fund, an oil transfer fee of \$0.08 per barrel was projected to sustain the oil pollution programs for FY14, FY15, and FY16 (detailed below). This estimate was calculated based upon an assumed 100 million barrels of oil transferred in the State. Based on the recent years and the historical record (Figure 1), this is likely a high estimate, thus a balance in the Oil Fund at the end of FY16 was necessary to accommodate, to a degree, this uncertainty. By transferring the funds from the Reimbursement Fund, the overall impact to petroleum businesses in Maryland is minimized while still being able to provide the necessary services to the State and the protection of its resources.

Projected Fiscal Year Balances for the Oil Fund at an \$0.08 / Barrel Oil Transfer Fee

	FY14	FY15	FY16
Beginning Balance	\$ 1.0	\$ 2.9	\$ 2.0
Fees	\$ 8.0	\$ 8.0	\$ 8.0
Transfer	\$ 2.5	\$ -0-	\$ -0-
Total	\$ 11.5	\$ 10.9	\$ 10.0
Projected Need	\$ (8.6)	\$ (8.9)	\$ (9.1)
Balance	\$ 2.9	\$ 2.0	\$ 0.9

Notes

- 1) All values in millions of dollars.
- 2) All fees based on 100 million barrels imported.
- 3) \$1,000,000 balance at end of FY13 was projected.
- 4) Projected needs are detailed in Table 3.

By transferring \$2,500,000 from the Reimbursement Fund, the remaining balance is projected to carry reimbursements to applicants through the end of FY16. These projections are based upon the level of applications and reimbursements from recent years continuing through the FY14, FY15, and FY16 period. The work group recognizes that during the work group discussions that are recommended for calendar year 2015, that a decision will need to be made on whether to begin funding the Reimbursement Fund again.

**Projected Fiscal Year Balances for the Reimbursement Fund with
Recommended Transfer to the Oil Fund**

	FY14	FY15	FY16
Beginning Balance	\$ 2,500,000	\$ 1,748,000	\$ 996,000
Reimbursements	\$ 700,000	\$ 700,000	\$ 700,000
Administrative Costs	\$ 48,000	\$ 48,000	\$ 48,000
Other	\$ 4,000	\$ 4,000	\$ 4,000
Total Need	\$ 752,000	\$ 752,000	\$ 752,000
Balance	\$ 1,748,000	\$ 996,000	\$ 244,000

Notes

- 1) Projected FY13 balance is approximately \$5,000,000
- 2) The FY14 starting balance includes the recommended \$2,500,000 transfer to the Oil Fund

V. CONCLUSIONS AND RECOMMENDATIONS

The citizens and businesses within the State of Maryland rely heavily on the use of petroleum products and bio-fuels for transportation, heating and other fuel use needs. Through conservation efforts, the use of alternative fuels, and current economic conditions the total import of petroleum products and bio-fuels has declined. Because of the overall decline of the import of oil (Figure 1), the expanded uses of the Oil Fund (Figure 3), and the scheduled oil fee decrease to \$0.03 per barrel the work group finds that there will be an immediate shortfall of funds to the State's oil pollution programs if the Oil Fund revenue structure is not revised.

The need to prevent releases through strict regulatory requirements and the need to properly staff the regulatory programs remain. Also, as the storage infrastructure ages and by accidental discharge, releases remain a common occurrence and continue to be a threat. An adequate State response program must remain in place. Therefore, the work group has concluded that the oil program funds should remain available and funded to a degree that provides the protection and resources deserving of the citizens of Maryland and the State's environmental resources.

The review of the Reimbursement Fund has found the need for assisting owners of heating oil tanks with release response continues. The work group finds no reason to change the limits of reimbursement (\$20,000) and has not found that the current \$500 deductible is prohibitive to the use of the fund. The work group recommends increasing the use of the fund to include nonprofit organizations. This will provide for additional assistance to a sector of heating oil tank users that may be unable to financially handle a release from their tank.

Based on the current balance of the Reimbursement Fund, there is sufficient revenue to transfer up to \$2,500,000 to the Oil Fund and to maintain the fund for FY14, FY15, and FY16. At this time the full impact of opening the Reimbursement Fund to nonprofit organizations is not anticipated to materially impact the funds solvency during this period.

The work group further finds that future long-term funding reviews remain justified and it is recommended that the review cycle remain at three years. This timing provides for sufficient flexibility to future economic and regulatory conditions.

Recommendations

The work group makes the following recommendations to preserve the continued operation of the State's oil pollution programs:

- Raise the oil transfer fee from \$0.0575 to \$0.08 per barrel beginning July 1, 2013 and continuing through June 30, 2016.
- Set the per barrel fee to \$0.03 per barrel beginning July 1, 2016.

- Move the Report on Status of the Maryland Oil Disaster Containment, Clean-Up, and Contingency Fund due date from October 1 to January 1.
- Beginning October 2, 2013, allow nonprofit organizations (under §501 (C)(3) of the Internal Revenue Code) to qualify for reimbursements from the Reimbursement Fund for cleanups related to heating oil tanks on their property.
- Extend the deadline for the Reimbursement Fund from June 30, 2013 to June 30, 2016.
- Transfer \$2,500,000 from the Reimbursement Fund to the Oil Fund (uncodified).
- Convene another work group to study the long-term funding needs of the Oil Fund in three years and require another report to be submitted to the State Legislature by December 31, 2015 (uncodified).

These recommendations were introduced as part of Senate Bill 875 in the 2013 Regular Session of the Maryland General Assembly.

VI. WORK GROUP MEMBERS

Maryland Department of Environment

Horacio Tablada, Director, Land Management Administration
 Heather Barthel, Director, Policy and Legislation
 Terri Wilson, Director, Office of Budget
 Christopher Ralston, Administrator, Oil Control Program
 Cynthia Keller, Administrator, Operations Services Program

Maryland Petroleum Council

Drew Cobbs

Mid-Atlantic Petroleum Distributors Association

Pete Horrigan

TABLE 1

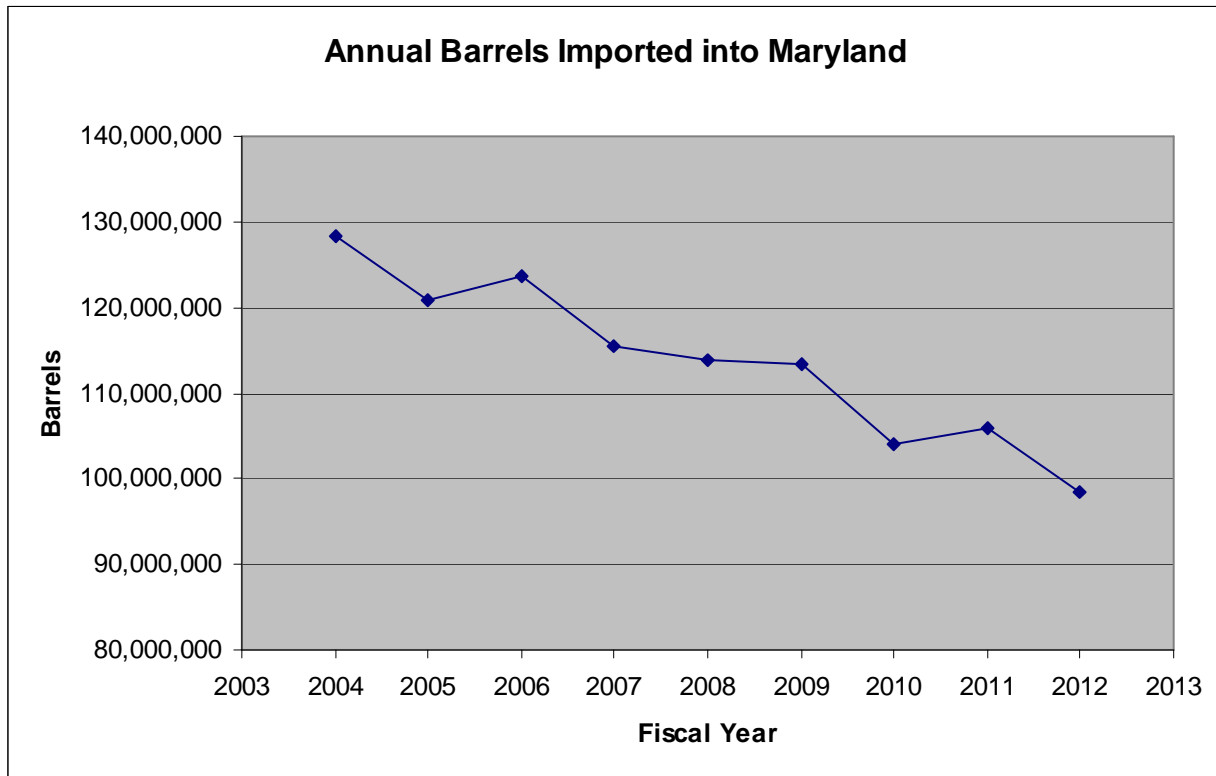
Oil Pollution Program Funding Projections for FY14 through FY16

Expenditures	FY14	FY15	FY16	3 YEAR TOTAL
LMA	\$4,915,000	\$5,063,000	\$5,215,000	\$15,193,000
ERD	\$2,062,000	\$2,124,000	\$2,187,000	\$6,373,000
ARMA	\$170,200	\$175,000	\$180,000	\$525,200
WMA	\$1,385,000	\$1,426,000	\$1,469,000	\$4,280,000
TOTAL	\$8,532,200	\$8,788,000	\$9,051,000	\$26,371,200
Estimated EPA Grant Reductions	\$100,000	\$100,000	\$100,000	\$300,000
TOTAL NEED	\$8,632,200	\$8,888,000	\$9,151,000	\$26,671,200

Notes

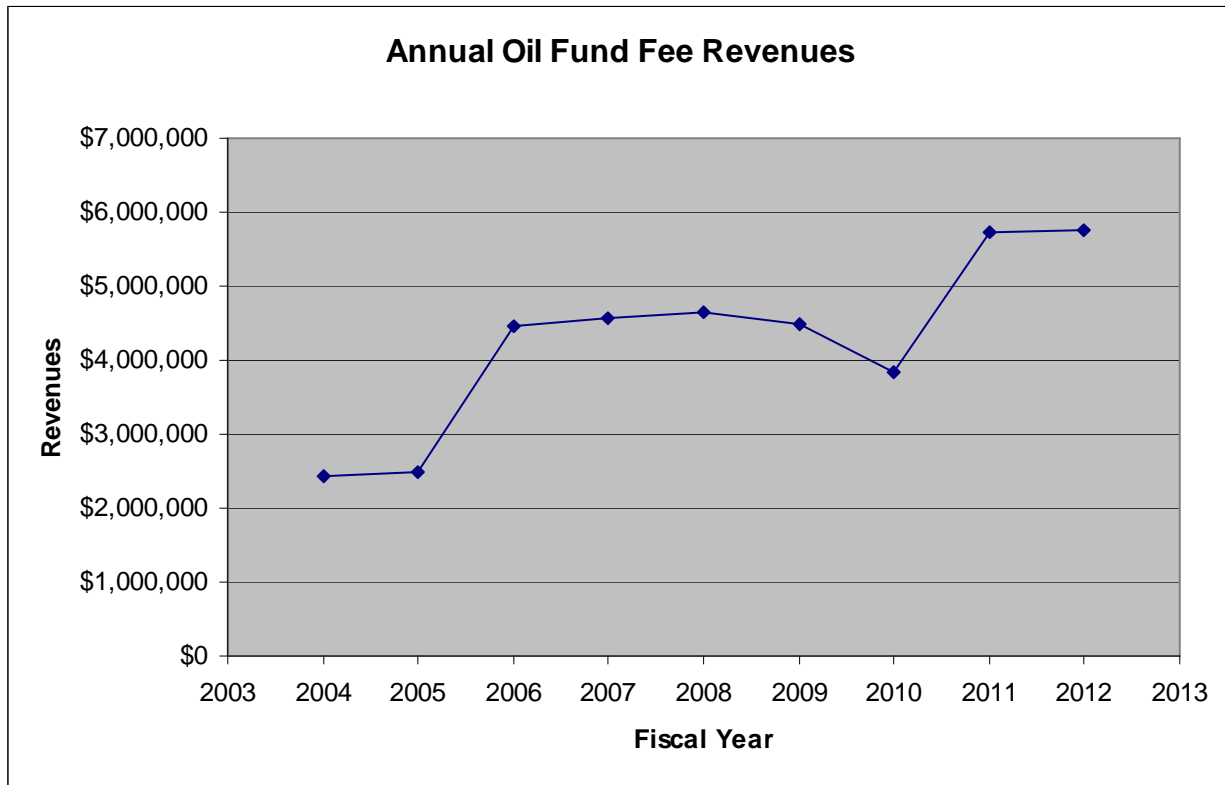
- Projections based upon FY12 actual and FY13 budgeted amounts, and an estimated 3% increase per year, which was based on state-wide salary increases, state-wide IT service increases including required computer upgrades, increases for State-Lead cleanups, vehicle replacements, and other unanticipated costs.

FIGURE 1



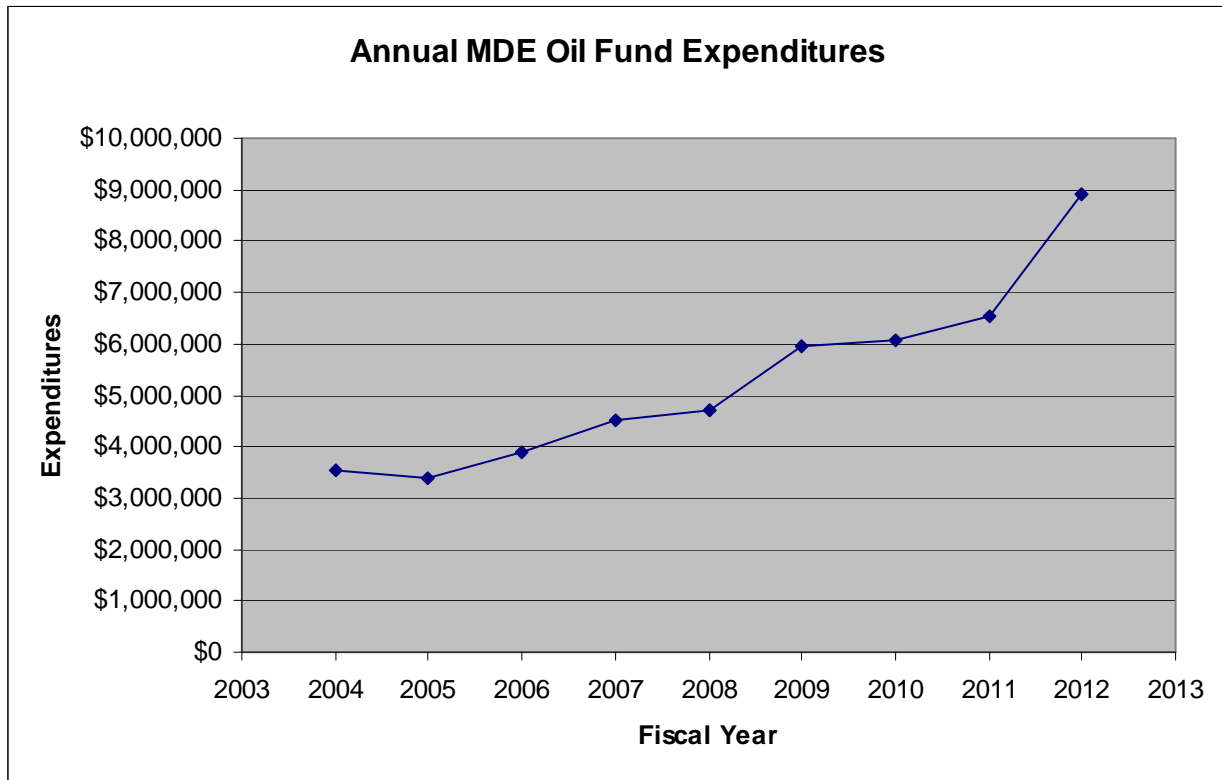
<u>Fiscal Year</u>	<u>Barrels</u>
2004	128,253,670
2005	120,774,792
2006	123,646,123
2007	115,566,185
2008	113,775,441
2009	113,417,135
2010	104,120,667
2011	105,970,587
2012	98,543,583

FIGURE 2



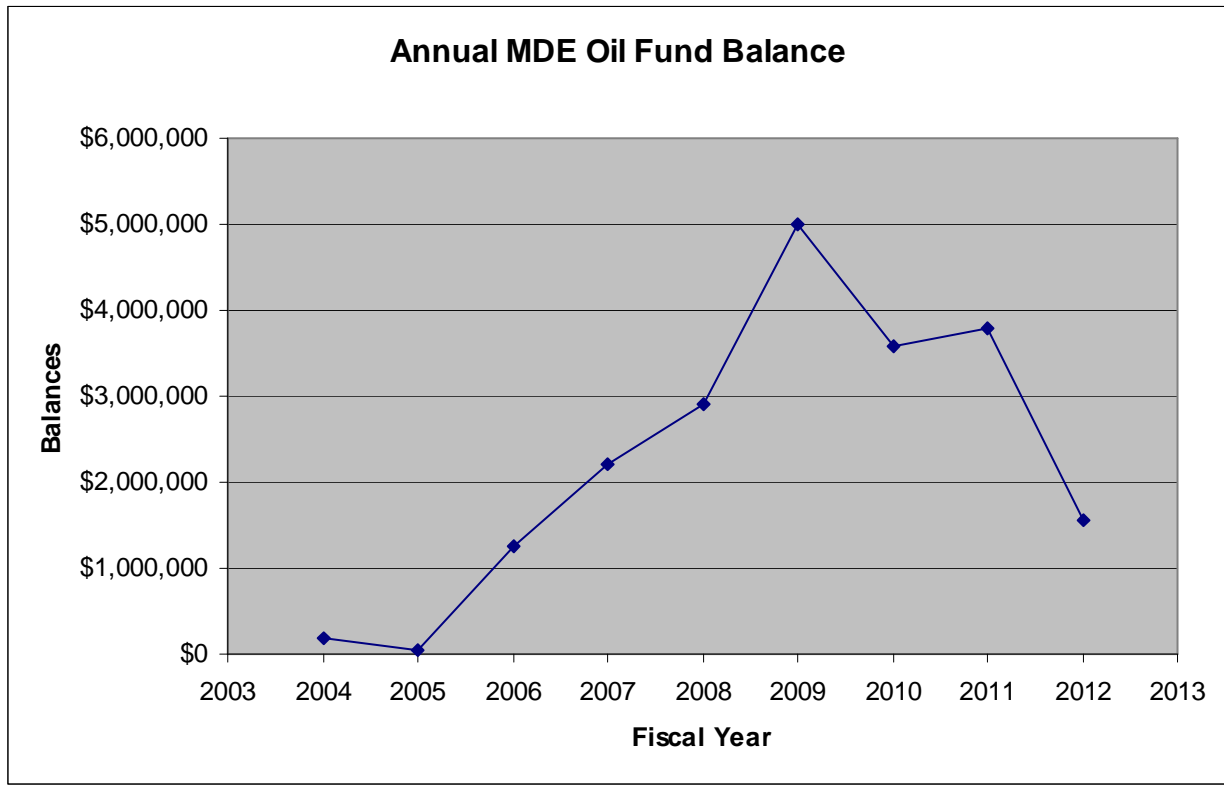
<u>Fiscal Year</u>	<u>Revenues</u>
2004	\$2,419,970
2005	\$2,484,649
2006	\$4,460,221
2007	\$4,576,643
2008	\$4,651,235
2009	\$4,498,620
2010	\$3,836,377
2011	\$5,742,931
2012	\$5,750,483

FIGURE 3



<u>Fiscal Year</u>	<u>Expenditures</u>
2004	\$3,531,679
2005	\$3,396,257
2006	\$3,882,574
2007	\$4,524,436
2008	\$4,704,938
2009	\$5,947,658
2010	\$6,075,753
2011	\$6,546,759
2012	\$8,927,719

FIGURE 4



<u>Fiscal Year</u>	<u>Ending Balance</u>
2004	\$191,291
2005	\$41,131
2006	\$1,252,175
2007	\$2,214,504
2008	\$2,912,404
2009	\$5,002,452
2010	\$3,588,427
2011	\$3,786,719
2012	\$1,548,355